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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JEREMY JAMES MEADOWS, Defendant and Appellant.	E064014 (Super.Ct.Nos. FSB9036268, FSB1003979) OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Pacheco, Judge, and Michael M. Dest, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, on June 9, 2011, defendant and appellant Jeremy James Meadows pleaded guilty to receiving stolen property (Pen. Code,[1] § 496, subd. (a); count 7), assault of a peace officer (§ 245, subd. (c); count 14), and attempted second degree burglary (§§ 664, 459; count 17). Subsequently, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, which among other things established a procedure for specified classes of offenders to have their felony convictions reduced to misdemeanors and be resentenced accordingly. (§ 1170.18.) Defendant filed a petition for resentencing, pursuant to section 1170.18, as to his felony convictions for receiving stolen property and attempting second degree burglary. The trial court found him ineligible for relief and denied the petition. On appeal, defendant challenges the court's finding, arguing that the prosecution bears the burden of rebutting the presumption of eligibility. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

On November 15, 2010, defendant was charged with 16 counts, including one count of receiving stolen property, to-wit, "San Bernardino County Sheriff's badge belonging to Deputy R. Escamilla . . . ." The felony complaint was silent as to the value of the stolen property. On June 9, 2011, defendant pleaded guilty to receiving stolen property, assault of a peace officer, and attempted second degree burglary. The trial court sentenced defendant to an aggregate term of three years four months.[2] On

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Judge Dest conducted defendant's plea hearing on June 9, 2011.

[footnote continued on next page]

November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)

On April 10, 2015, defendant filed a section 1170.18 petition to reduce his felony convictions for receiving stolen property and attempted second degree burglary. On May 22, 2015, at the hearing, the trial court questioned whether the receiving stolen property charge was eligible because there was no information on the value of the stolen property. The court further questioned whether the attempted burglary was first or second degree. The prosecutor responded: "With regard to the [receiving stolen property] count the value of that was over $950, so we would submit he is ineligible. As to the attempt[ed] burglary, second degree, it was a closed business, so for that reason we would argue he's ineligible as to all counts." The trial court denied the petition on the grounds defendant was not eligible for relief.[3]

II. DISCUSSION

Defendant contends he was eligible to be resentenced unless the prosecution established the value of the stolen property exceeded $950. Since the prosecution presented no evidence on that point, and the record of conviction was silent, he argues that the trial court should have granted his section 1170.18 (Proposition 47) petition. We disagree.

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[3] Judge Pacheco heard defendant's resentencing petition on May 22, 2015.

"Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) "Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47." (*Id.* at p. 1092)

Proposition 47 added section 459.5 (creating shoplifting as a crime), and amended section 496 (receiving stolen property). Section 459.5, subdivision (a), defines shoplifting, as "entering a commercial establishment with the intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950). . . ." The newly enacted statute also provides that the act of shoplifting shall be charged as shoplifting unless the defendant has a disqualifying prior conviction (i.e., a conviction for an offense listed in § 667, subd. (e)(2)(C)) or a sex offense requiring registration pursuant to section 290, subdivision (c), and a defendant may not be charged with burglary or theft of the same property. (§ 459.5, subds. (a), (b).)

As amended, section 496, subdivision (a) now specifies that "if the value of the [stolen] property does not exceed nine hundred fifty dollars ($950) the offense shall be a

misdemeanor, punishable only by imprisonment in a county jail not exceeding one year . . . ."

It is a well-settled principle that """a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting."' [Citations.]" (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879 (*Sherow*); see *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449; see also Evid. Code, § 500 ["a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief . . . that he is asserting"].) Consistent with this principle, "a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing." (*Sherow*, *supra*, at p. 878.) Where, as in this case, the critical factual issue is the value of stolen property, defendant must "show the property loss . . . did not exceed $950 . . . ." (*Id.* at p. 877.) Likewise, he must show that the commercial establishment was open at the time of the attempted burglary.

Defendant did not present evidence to meet this burden. Defendant's petition did not allege or cite evidence that the value of the property was under $950 or that he committed the attempted burglary while the establishment was open during regular business hours. At the hearing on the petition, defense counsel offered no evidence on these factual issues. Having failed to present such evidence, defendant failed to meet his burden of showing his felony convictions would have been misdemeanors had Proposition 47 been in effect at the time of his conviction. The trial court therefore properly denied defendant's petition. (§ 1170.18, subd. (b) ["the court shall determine whether the defendant satisfies the criteria in subdivision (a)"].)

Defendant contends *People v. Guerrero* (1988) 44 Cal.3d 343 and similar cases relieve him of the burden of proof precisely because the record of conviction is silent regarding the value of the stolen property. Under *Guerrero*, where the facts are limited to the record of conviction in a prior case and the record "does not disclose any of the facts of the offense actually committed, the court will presume that the prior conviction was for the least offense punishable." (*Id.* at p. 352.) However, the principle articulated in *Guerrero* is not applicable in Proposition 47 resentencing cases. In *Guerrero*, the California Supreme Court recognized courts have applied a presumption in favor of the least offense punishable where the prosecution sought to enhance a current sentence based on the facts of a prior case. In such cases the *prosecution* has the burden of establishing enhancements apply. (*People v. Towers* (2007) 149 Cal.App.4th 1066, opn. mod. 150 Cal.App.4th 1273, 1277 ["The prosecution bears the burden of proving beyond a reasonable doubt that a defendant's prior convictions were for either serious or violent felonies."].) As a result, any failure of evidence defeats the ability of the prosecution to meet its burden to show the prior offense was subject to greater punishment, triggering an enhancement. Here, as we have discussed, the defendant is seeking relief and he therefore must carry the burden of showing eligibility. In that setting, the failure of proof cuts against defendant.

Defendant contends *People v. Bradford* (2014) 227 Cal.App.4th 1322 supports relieving him of the burden of proof. We disagree. In *Bradford*, the Third District held that under the Three Strikes Reform Act of 2012 the prosecution was not permitted to go outside the record of conviction to establish a defendant is ineligible for resentencing on

the basis of the nature of his conviction. (*Bradford*, *supra*, at p. 1339.) The *Bradford* court did not relieve the defendant of his burden of presenting evidence to support his petition. On the contrary, the court indicated "the petitioner would be well advised to address eligibility concerns in the initial petition for resentencing." (*Id.* at p. 1341.)

Moreover, due process is not offended by requiring the petitioning defendant to bear the burden of establishing eligibility for resentencing because defendant has already been proven guilty of the offenses for which he was convicted. It is defendant who is seeking remediation of his sentence, not the People seeking to enhance it. (*People v. Sherow*, *supra*, 239 Cal.App.4th at p. 880.) Here, defendant did not offer testimony or other evidence concerning the value of the stolen property, or whether the business was open at the time of the attempted burglary. (*Id.* at p. 880.) "A proper petition could certainly contain at least [petitioner's] testimony about the nature of the items taken. If he made the initial showing the court [could] take such action as appropriate to grant the petition or permit further factual determination." (*Ibid.*) Without such a showing, the trial court did not err in deciding that defendant had not established his eligibility for resentencing.[4] The proper remedy is to permit defendant to file a new petition. (See *People v. Perkins* (2016) 244 Cal.App.4th 129, 140 ["In any new petition, defendant should describe the stolen property and attach some evidence, whether a declaration,

[4] Defendant's argument that the trial court improperly relied on the prosecutor's statements that the property was worth more than $950 and the business was closed at the time of the attempted burglary ignores the fact that defendant presented no evidence or argument to show that he qualified for relief under section 1170.18.

court documents, record citations, or other probative evidence showing" that the property's value did not exceed $950].)

III. DISPOSITION

The order denying defendant's petition for resentencing is affirmed without prejudice to subsequent consideration of a properly filed petition. (*Sherow*, *supra*, 239 Cal.App.4th at p. 881.)

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.